

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 430 of 1999

in

SPECIAL CIVIL APPLICATION No 3570 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and Sd/-

MR.JUSTICE A.L.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

MANAGING DIRECTOR

Versus

AMRUTLAL GOKALDAS TANNA

Appearance:

MR ARUN H MEHTA for Appellants

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 04/05/99

ORAL JUDGEMENT

ADMITTED. Mr. Yogesh Lakhani for the

respondents - original petitioners appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This Appeal is filed against an interlocutory order passed by the learned single Judge on 15th March, 1999 in Special Civil Application No.3670 of 1999.

3. The respondents - original petitioners filed the above petition for issuing an appropriate writ, direction or order quashing and setting aside the action of the appellant bank in not giving the benefits of gratuity on the basis of revised pay-scale from 1.11.1994 and of gratuity with effect from 1.7.1993. When the petition was placed for hearing before the learned single Judge, it was admitted. At that time, as observed in the order, the learned single Judge heard the learned Counsel for the petitioner who was present but none appeared for the respondents. The learned single Judge in paragraph 2 observed as under:

"Rule. By way of interim relief, the respondents are directed to compute the difference of gratuity payable on the last drawn wages in the case of each of the petitioners as per the fixation of pay in terms of Annexure 'B' on the respective date of their retirement and deposit the said amount in this Court within one month. The respondents are also directed to furnish the details thereof before this court on the next date of hearing."

Rule was made returnable on 19th April, 1999.

4. Mr.A.H.Mehta, learned Counsel for the Appellant stated that he has no grievance so far as admission of the petition is concerned. He, therefore, does not press the prayer by which petition is admitted and Rule is issued. He, however, submitted that, in the facts and circumstances of the case, interim relief could not have been granted. According to him, when the Rule was made returnable on 19th April, 1999 within a period of about one month and the learned Counsel for the respondent was not present, the learned single Judge ought not to have passed the interim order. He also submitted that at the time of final disposal of the petition, an appropriate order can always be passed. The respondent before the learned single Judge (the appellant herein) was a nationalised bank. According to him, it would not be proper to direct the bank to deposit the amount in this

Court.

5. The learned Counsel for the respondent, on the other hand, submitted that in the facts and circumstances of the case, the order was passed by the learned single Judge cannot be said to be illegal or without jurisdiction. He also submitted that the learned single Judge has not directed the amount to be paid to the petitioners. When a discretion is exercised by directing the bank to deposit the amount in this Court, it cannot be said that by doing so, the learned single Judge exceeded the jurisdiction.

6. In the facts and circumstances of the case, in our opinion, the learned single Judge ought not to have granted interim relief particularly when the learned Counsel for the respondent was not present. So far as issuance of Rule is concerned, the learned Counsel for the appellant did not challenge that part of the order and we are also not inclined to interfere with the said order. In the facts and circumstances of the case, however, as no interim order ought to have been passed, we set aside the interim order.

7. In the result, the Appeal is partly allowed. The order of Rule passed by the learned single Judge is confirmed and the order regarding interim relief is set aside. It is open to the learned Counsel for the original petitioner to request the Hon.'ble Court for early disposal of the matter. As and when such prayer is made, we have no doubt that the learned single Judge will consider that prayer in the facts and circumstances of the case, and pass appropriate order.

(KMG Thilake)

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